

ITEM NUMBER: C 66/03/15

RECOMMENDATION FROM THE EXECUTIVE MAYOR: 19 MARCH 2015

MC 48/03/15 PROPOSED SALE OF A PORTION OF REMAINDER ERF 18370, KHAYELITSHA TO THE KHAYELITSHA COMMUNITY TRUST (KCT) TO ON SELL TO ATLANTIC PHILANTHROPIES

It is **RECOMMENDED** that:

- (a) the approximately 4000m² portion of Remainder Erf 18370, Khayelitsha, zoned Mixed-use 1, situated at the corner of Julius Tsolo and Mzala Streets on the KBD land and illustrated in Annexure A to the report on the agenda, be sold to the Khayelitsha Community Trust (KCT) at the purchase price as agreed in the Land Availability Agreement (R100-00/m² pro-rata exclusive of VAT) concluded between the City and the Khayelitsha Community Trust, subject to:
 - (i) the KCT may on-sell the subject property only at market value to Atlantic Philanthropies for the development of a Youth and Community Centre;
 - (ii) the final purchase price be determined after survey of the land portion;
 - (iii) an agreement be concluded between KCT and Atlantic Philanthropies in terms of which Atlantic Philanthropies is obliged to undertake the development of the Youth and Community Centre;
 - (iv) an agreement be concluded between the City and the KCT in respect of the subject property being sold to the KCT;
 - (v) the subdivision of Erf 18370, Khayelitsha to create a new property for the proposed Youth and Community Centre;
 - (vi) the fulfilment of all other statutory requirements.
- (b) the subject property is not required to provide the minimum level of basic municipal services and can therefore be utilised for the development of the proposed Youth and Community Centre
- (c) condonation and ratification be granted for the in principle approval in terms of Regulation 5(1)(b)(ii) together with the final approval in terms of this recommendation

- (d) the Director: Property Management or a nominee be authorised to include further conditions on the sale of the land as may be necessary, and to conclude and sign the sale agreement
- (e) in the event that the transaction is not concluded within 24 months, the matter be referred back to Council for reconsideration
- (f) the proceeds from the sale of the land to KCT be deposited into a separate operating account to be utilised by the City for housing development in terms of the National Housing Act (Act 107 of 1997).

SPIPAC
12/03/2015

PROPOSED SALE OF A PORTION OF REMAINDER ERF 18370,
KHAYELITSHA TO THE KHAYELITSHA COMMUNITY TRUST TO ON
SELL TO ATLANTIC PHILANTHROPIES

MC 48/03/15

ISIPHAKAMISO SOKUTHENGISWA KWESIQEPHU SENTSALELA
YESIZA18370, ESISEKHAYELITSHA, KWITHRASTI YOLUNTU
YASEKHAYELITSHA (KCT)

VOORGESTELDE VERKOOP VAN 'N GEDEELTE VAN RESTANT
ERF 18370, KHAYELITSHA, AAN DIE KHAYELITSHA-
GEMEENSKAPSTRUST (KCT) VIR DEURVERKOOP AAN ATLANTIC
PHILANTHROPIES

Property Management representatives were present to answer any
questions for clarity.

The Committee recommended that Regulation 5(1)(b)(ii) of MATR be
included as Recommendation (c) and the subsequent recommendations be
re-numbered accordingly.

RECOMMENDATIONS

Not delegated: for decision by Council:

For the reasons set out in the report it is recommended that:

- a) The approximately 4000m² portion of Remainder Erf 18370, Khayelitsha, zoned Mixed-use 1, situated at the corner of Julius Tsolo and Mzala Streets on the KBD land and illustrated in **Annexure A**, be sold to the KCT at the purchase price as agreed in the Land Availability Agreement (R100-00/m² pro-rata exclusive of VAT) concluded between the City and the KCT subject to:
 - i) The KCT may on-sell the subject property only at market value to Atlantic Philanthropies for the development of a Youth and Community Centre;
 - ii) The final purchase price be determined after survey of the land portion;
 - iii) An agreement be concluded between KCT and Atlantic Philanthropies in terms of which Atlantic Philanthropies is obliged to undertake the development of the Youth and Community Centre;
 - iv) An agreement be concluded between the City and the KCT in respect of the subject property being sold to the KCT;
 - v) The subdivision of Erf 18370, Khayelitsha to create a new property for the proposed Youth and Community Centre; and
 - vi) The fulfilment of all other statutory requirements.

- b) The subject property is not required to provide the minimum level of basic municipal services and can therefore be utilised for the development of the proposed Youth and Community Centre.

- c) Condonation and ratification be granted for the in principle approval in terms of Regulation 5(1)(b)(ii) together with the final approval in terms of this Recommendation .
- d) The Director: Property Management or a nominee be authorised to include further conditions on the sale of the land as may be necessary, and to conclude and sign the sale agreement.
- f) In the event that the transaction is not concluded within 24 months, the matter be referred back to Council for reconsideration.
- g) The proceeds from the sale of the land to KCT be deposited into a separate operating account to be utilised by the City for housing development in terms of the National Housing Act (Act 107 of 1997).

IZINDULULO

Ngokwezizathu eziqulunqwe kwingxelo kundululwe ukuba:

- a) Isiqephu esibukhulu bumalunga ne4000m² entsalela yesiza18370, esiseKhayelitsha izowuni esetyenziselwa imixube 1, ekwikona yesitalato iTsolo neMzala , esiboniswe kwisihlomelo , masithengiselwe kwabeKTC ngexabiso lentengiso njengoko livunyiwe kwiSivumelwano somhlaba okhoyo nofumanekayo(R100 i m² yesahlulo, ngaphandle kweRhafu-ntengo) kwaye isivumelwano sentengo masiqukunjelwe phakathi kweSixeko neKTC kuxhomekeke koku:
 - i) IKTC mayithengise ipropati echaphazelekayo ngexabiso lemakethe kwabakwa-Atlantic Philanthropies ukulungiselela uphuhliso lwabantu abatsha neziko loluntu;
 - ii) Ixabiso lentengiso lokugqibela malichazwe emva kokuhlolwa kwesiqephu somhlaba;
 - iii) Isivumelwano masiqukunjelwe phakathi kweKTC nabakwa-Atlantic Philanthropies ngokwemigaqo apho abakwa-Atlantic Philanthropies bazibophelele ukuba baphuhlise ulutsha neziko loluntu.
 - iv) Isivumelwano masiqukunjelwe phakathi kweKTC nabakwa-Atlantic Philanthropies ngokubhekiselele kwipropati echaphazelekayo ukuba iyathengiswa kwiKCT;
 - v) Ulwahlulwa-hlulo lwentsalela yesiza-18370, esiseKhayelitsha, ukwakha ipropati entsha yeziko eliphakanyisiweyo lolutsha noluntu;
 - vi) Ekuzalisekweni kwazo zonke ezinye iimfuno zomthetho.
- b) ipropati echaphazelekayo ayifuneki ukuba ibonelele ngomlinganiselo weenkondo ezingundoqo zikamasipala kwaye ngoko ke, ingasetyenziswa kuphuhliso lweziko eliphakanyisiweyo lolutsha noluntu.

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- c) Makuvunyelwe ukwamkelwa nokulungiswa kulungiselelwa ukuphunyezwa ngokomthetho-siseko, ngokungqinelana nomgaqo-5(1)(b)(ii) kuqukwa nesiphumezo sokugqibela ngokubhekisele kwesi sindululo.
 - d) Ukuba uMlawuli woLawulo lweePropati okanye lowo utyunjwe nguye makunikezelwe igunya lokuquka imiqathango ethe xhaxhe ekuthengisweni komhlaba apho kuyakuthi kubonakale kufanelekile, kwakhona kuquke ukuqukunjelwa nokutyikitywa kwezivumelwano zentengiselwano;
 - e) Ukuba kuthe unaniselwano olu luye alaqukunjelwa kwiinyanga ezingama-24, umbandela lo kufuneka ubuyiselwe kwiBhunga ukuba uphinde uqwalaselwe;
 - f) Ukuba izimali ezingokuthengiswa komhlaba kwabakwa-KCT mazingeniswe kwi-akhawunti eyodwa esebenzisekayo apho iyakuthi isetyenziswe sisiXeko kuphuhliso lwezezindlu ngokungqinelana noMthetho weSizwe ongezeZindlu onguNomb.107 wangowe-1997.

AANBEVELINGS

Nie gedelegeer nie: vir besluitneming deur die Raad:

Op grond van die redes wat in die verslag uiteengesit is, word daar aanbeveel dat:

- a) Die gedeelte van restant erf 18370, Khayelitsha, ongeveer 4000m² groot, gesoneer gemengde gebruik 1, geleë op die hoek van Julius Tsolo- en Mzalastraat op grond in die Khayelitsha-sakedistrik, aangetoon in bylae D, verkoop word aan die KCT teen die koopprys soos ooreengekom in die grondbesikbaarheidsooreenkoms (R100 per m² pro rata, BTW uitgesluit) en dat die verkoopsooreenkoms tussen die Stad en die KCT gesluit word onderworpe aan:
 - i) Die KCT mag die onderhawige eiendom slegs teen markwaarde deurverkoop aan Atlantic Philanthropies vir die ontwikkeling van 'n jeug-en-gemeenskapsentrum;
 - ii) Die finale koopprys bepaal word ná opmeting van die grondgedeelte;
 - iii) 'n Ooreenkoms tussen die KCT en Atlantic Philanthropies gesluit moet word ingevolge waarvan Atlantic Philanthropies verplig sal wees om die ontwikkeling van die jeug-en-gemeenskapsentrum te onderneem;
 - iv) 'n Ooreenkoms tussen die Stad en die KCT gesluit moet word ten opsigte van die onderhawige eiendom wat aan die KCT verkoop word;
 - v) Die onderverdeling van restant erf 18370, Khayelitsha, om 'n nuwe eiendom te skep vir die voorgestelde jeug-en-gemeenskapsentrum;
 - vi) Die nakoming van alle ander statutêre vereistes.

- b) Die onderhawige eiendom nie vereis word vir die voorsiening van die minimum vlak van basiese munisipale dienste nie en daarom kan dit dus vir die ontwikkeling van die voorgestelde jeug-en-gemeenskapsentrum gebruik word.
- c) Kondonering en bekragtiging toegestaan word vir goedkeuring in beginsel ingevolge regulasie 5(1)(b)(ii), tesame met die finale goedkeuring in ooreenstemming met hierdie aanbeveling.
- d) Die direkteur: eiendomsbestuur of 'n genomineerde persoon gemagtig word om verdere verkoopsvoorwaardes, wat nodig mag wees, by die ooreenkoms in te sluit en die verkoopsooreenkoms te sluit en te onderteken.
- e) Indien die transaksies nie binne 24 maande gesluit is nie, die saak na die Raad terugverwys word vir heroorweging.
- f) Die opbrengs van die verkoop van die grond aan die KCT in 'n afsonderlike bedryfsrekening inbetaal word vir gebruik deur die Stad vir die ontwikkeling van behuising ingevolge die nasionale Behuisingswet, Wet 107 van 1997.

ACTION: A HUMAN; R GELDERBLOEM

It is noted that this resolution is in line with Supply Chain Management Policy.



MR RICHARD WOOTTON
EMPLOYEE NO: 10207948
CHAIRPERSON : IMMOVABLE PROPERTY
ADJUDICATION COMMITTEE

DATE:

12/03/15

COMMENT:



DIRECTOR : LEGAL SERVICES
MR LUNGELO MBANDAZAYO

DATE:

13/03/2015

COMMENT:

I do not agree with the inclusion of recommendation (c) because there is no motivation for same; to enable the decision maker to make an informed decision.

[Handwritten signature]

ALDERMAN IAN NEILSON
MAYORAL COMMITTEE MEMBER : FINANCE

COMMENT:

378

DATE:

12/5/15



REPORT TO IPAC

SPIPAC 12/03/2015

DATE 2015-03-19 **LCP717/3**

1. ITEM NUMBER :

2. SUBJECT

PROPOSED SALE OF A PORTION OF REMAINDER ERF 18370, KHAYELITSHA TO THE KHAYELITSHA COMMUNITY TRUST TO ON SELL TO ATLANTIC PHILANTHROPIES [F0032]

ONDERWERP

VOORGESTELDE VERKOOP VAN 'N GEDEELTE VAN RESTANT ERF 18370, KHAYELITSHA, AAN DIE KHAYELITSHA-GEMEENSKAPSTRUST (KCT) VIR DEURVERKOOP AAN ATLANTIC PHILANTHROPIES [F0032]

ISIHLOKO

**ISIPHAKAMISO SOKUTHENGISWA KWESIQEPHU SENTSALELA
YESIZA18370, ESISEKHAYELITSHA, KWITHRASTI YOLUNTU
YASEKHAYELITSHA (KCT) [F0032]**

3. STRATEGIC INTENT

- Opportunity City

| | |
|----------------------|---|
| Objective 1.2 | Provision and maintenance of economic and social infrastructure to ensure infrastructure-led growth and development |
| Programme 1.2(b) | Investigation and analysis of all strategic assets |
| Objective 1.5 | Leverage the City's assets to drive economic growth and sustainable development |
| Programme 1.5(a) | City strategic assets investigation |

Making progress possible. Together.



4. PURPOSE

In line with the Land Availability Agreement concluded between the City of Cape Town and the Khayelitsha Community Trust in 2004, the purpose of this report is to seek Council's approval for the direct sale of approximately 4000m² portion of Remainder Erf 18370, Khayelitsha situated at the corner of Julius Tsolo and Mzala Streets in the Khayelitsha Business District (KBD), zoned Mixed-use1, shown lettered **A, B C and D** on **Plan LIS 1249v1** attached hereto as **Annexure A**, to the Khayelitsha Community Trust at R100-00/m² (exclusive of VAT) to on sell to Atlantic Philanthropies at market value for the development of a youth and community centre.

5. FOR DECISION BY COUNCIL

This report is for decision by Council

The legal provision for this non-delegable authority can be found in Section 14 of the Municipal Finance Management Act No.56 of 2003 and Regulation 5 of the Municipal Asset Transfer Regulations of 2008.

6. EXECUTIVE SUMMARY

| | | |
|--------------------------------------|---|------------|
| PURPOSE OF REPORT | The purpose of this report is to seek Council's approval for the direct sale of approximately 4000m ² portion of Remainder Erf 18370, Khayelitsha, to the Khayelitsha Community Trust to on sell to Atlantic Philanthropies for the development of a youth and community centre. | |
| Property description | Portion of Remainder Erf 18370, Khayelitsha | |
| Site extent | Approximately 4000m ² | |
| Current zoning | Mixed-use 1 | |
| Current usage | Vacant Land | |
| Proposed usage | Youth and Community Centre | |
| Public participation outcome summary | No objections | |
| Ward Councillor Solomon Philander | NOTICE DATE 08-12-2014 | WARD 94 |

7. RECOMMENDATIONS

[F0032]

Not delegated: for decision by Council:

It is recommended that:

- a) The approximately 4000m² portion of Remainder Erf 18370, Khayelitsha, zoned Mixed-use 1, situated at the corner of Julius Tsolo and Mzala Streets on the KBD land and illustrated in **Annexure A**, be sold to the KCT at the

purchase price as agreed in the Land Availability Agreement (R100-00/m² pro-rata exclusive of VAT) concluded between the City and the KCT subject to:

- i) The KCT may on-sell the subject property only at market value to Atlantic Philanthropies for the development of a Youth and Community Centre;
 - ii) The final purchase price be determined after survey of the land portion;
 - iii) An agreement be concluded between KCT and Atlantic Philanthropies in terms of which Atlantic Philanthropies is obliged to undertake the development of the Youth and Community Centre;
 - iv) An agreement be concluded between the City and the KCT in respect of the subject property being sold to the KCT;
 - v) The subdivision of Erf 18370, Khayelitsha to create a new property for the proposed Youth and Community Centre; and
 - vi) The fulfilment of all other statutory requirements.
- b) The subject property is not required to provide the minimum level of basic municipal services and can therefore be utilised for the development of the proposed Youth and Community Centre.
 - c) The Director: Property Management or a nominee be authorised to include further conditions on the sale of the land as may be necessary, and to conclude and sign the sale agreement.
 - d) In the event that the transaction is not concluded within 24 months, the matter be referred back to Council for reconsideration.
 - e) The proceeds from the sale of the land to KCT be deposited into a separate operating account to be utilised by the City for housing development in terms of the National Housing Act (Act 107 of 1997).

AANBEVELINGS

[F0032]

Nie gedeleger nie: vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a) Die gedeelte van restant erf 18370, Khayelitsha, ongeveer 4000m² groot, gesoneer gemengde gebruik 1, geleë op die hoek van Julius Tsolo- en Mzalastraat op grond in die Khayelitsha-sakedistrik, aangetoon in bylae D, verkoop word aan die KCT teen die koopprys soos ooreengekom in die grondbeskikbaarheidsooreenkoms (R100 per m² pro rata, BTW uitgesluit) en dat die verkoopsooreenkoms tussen die Stad en die KCT gesluit word onderworpe aan:
 - i) Die KCT mag die onderhawige eiendom slegs teen markwaarde deurverkoop aan Atlantic Philanthropies vir die ontwikkeling van 'n jeug-en-gemeenskapsentrum;
 - ii) Die finale koopprys bepaal word ná opmeting van die grondgedeelte;

- iii) 'n Ooreenkoms tussen die KCT en Atlantic Philanthropies gesluit moet word ingevolge waarvan Atlantic Philanthropies verplig sal wees om die ontwikkeling van die jeug-en-gemeenskapsentrum te onderneem;
 - iv) 'n Ooreenkoms tussen die Stad en die KCT gesluit moet word ten opsigte van die onderhawige eiendom wat aan die KCT verkoop word;
 - v) Die onderverdeling van restant erf 18370, Khayelitsha, om 'n nuwe eiendom te skep vir die voorgestelde jeug-en-gemeenskapsentrum;
 - vi) Die nakoming van alle ander statutêre vereistes.
- b) Die onderhawige eiendom nie vereis word vir die voorsiening van die minimum vlak van basiese munisipale dienste nie en daarom kan dit dus vir die ontwikkeling van die voorgestelde jeug-en-gemeenskapsentrum gebruik word.
 - c) Die direkteur: eiendomsbestuur of 'n genomineerde persoon gemagtig word om verdere verkoopsvoorwaardes, wat nodig mag wees, by die ooreenkoms in te sluit en die verkoopsooreenkoms te sluit en te onderteken.
 - d) Indien die transaksies nie binne 24 maande gesluit is nie, die saak na die Raad terugverwys word vir heroorweging.
 - e) Die opbrengs van die verkoop van die grond aan die KCT in 'n afsonderlike bedryfsrekening inbetaal word vir gebruik deur die Stad vir die ontwikkeling van behuising ingevolge die nasionale Behuisingwet, Wet 107 van 1997.

IZINDULULO**[F0032]**

Azgunyaziswanga: isigqibo seseBhunga:

- a) Isiqephu esibukhulu bumalunga ne4000m² sentsalela yesiza18370, esiseKhayelitsha izowuni esetyenziselwa imixube 1, ekwikona yesitalato iTsolo neMzala , esiboniswe kwisihlomelo , masithengiselwe kwabeKTC ngexabiso lentengiso njengoko livunyiwe kwiSivumelwano somhlaba okhoyo nofumanekayo(R100 i m² yesahlulo, ngaphandle kweRhafu-ntengo) kwaye isivumelwano sentengo masiqukunjelwe phakathi kweSixeko neKTC kuxhomekeke koku:
 - i) IKTC mayithengise ipropati echaphazelekayo ngexabiso lemakethe kwabakwa-Atlantic Philanthropies ukulungiselela uphuhliso lwabantu abatsha neziko luntu;
 - ii) Ixabiso lentengiso lokugqibela malichazwe emva kokuhlolwa kwesiqephu somhlaba;
 - iii) Isivumelwano masiqukunjelwe phakathi kweKTC nabakwa-Atlantic Philanthropies ngokwemigaqo apho abakwa-Atlantic Philanthropies bazibophelele ukuba baphuhlise ulutsha neziko loluntu.
 - iv) Isivumelwano masiqukunjelwe phakathi kweKTC nabakwa-Atlantic Philanthropies ngokubhekiselele kwipropati echaphazelekayo ukuba iyathengiswa kwiKCT;



- v) Ulwahluiwa-hlulo lwentsaleia yesiza-18370, esiseKhayelitsha, ukwakha ipropati entsha yeziko eliphakanyisiweyo lolutsha noluntu;
 - vi) Ekuzalisekweni kwazo zonke ezinye iimfuno zomthetho.
- b) ipropati echaphazelekayo ayifuneki ukuba ibonelele ngomlinganiselo weenkondo ezingundoqo zikamasipala kwaye ngoko ke,, ingasetyenziswa kuphuhliso lweziko eliphakanyisiweyo lolutsha noluntu.
 - c) Ukuba uMlawuli woLawulo lweePropati okanye lowo utyunjwe nguye makunikezelwe igunya lokuquka imiqathango ethe xhaxhe ekuthengisweni komhlaba apho kuyakuthi kubonakale kufanelekile, kwakhona kuquke ukuqukunjelwa nokutyikitywa kwezivumelwano zentengiselwano;
 - d) Ukuba kuthe unaniselwano olu luye alaqukunjelwa kwiinyanga ezingama-24, umbandela lo kufuneka ubuyiselwe kwiBhunga ukuba uphinde uqwalaselwe;
 - e) Ukuba izimali ezingokuthengiswa komhlaba kwabakwa-KCT mazingeniswe kwi-akhawunti eyodwa esebenzisekayo apho iyakuthi isetyenziswe sisiXeko kuphuhliso lwezezindlu ngokungqinelana noMthetho weSizwe ongezeZindlu onguNomb.107 wangowe-1997.

8. DISCUSSION/CONTENTS

The Khayelitsha Business District (KBD) land, namely, Remainder Erf 18370, Khayelitsha is bound by Spine Road (north), Steve Biko Road (south), Govan Mbeki Road (east) and the Khayelitsha train station (west). The copy of the disposal plan **LIS 1249v0** is attached as **Annexure A**.

In 1998 the City of Cape Town (the City) identified the KBD project as a project of high priority. To finance the project a collaboration and co-operation agreement was concluded in 2001 between the City and the Rand Merchant Bank. In December 2003 the City founded the Khayelitsha Community Trust (KCT) with the overall objective of uplifting the community of Khayelitsha. To achieve this, the KCT was in 2004 empowered through the conclusion of a Land Availability Agreement (LAA) which enables the KCT to procure the KBD land prior to any development on the KBD land and to facilitate the development on such land. The copy of a plan indicating the extent of the KBD land allocated in terms of the LAA to KCT is attached as **Annexure B**.

The City of Cape Town is the registered owner of the KBD land. In making the KBD land available to the KCT at a prescribed under market value as determined in terms of Section 4.4 of the LAA, it is the intention and overriding objective of the City to benefit the KCT including its registered beneficiaries, from the income generated from the developments on the KBD land once it has been developed and the obligations in terms of repayment of third party finance have been met.

The Executive Committee (EXCO) authorised in April 2003, that the KCT undertakes the KBD development through entities which it would establish. This is captured contractually in the LAA and other agreements and approvals which arose pursuant to the LAA.



The construction of the existing Khayelitsha Shopping Centre by the KCT covering 17 500m² in extent was facilitated by Property Management Department and completed in 2005. The Trust retains the ownership of the retail centre as a long term asset and is now undertaking the development of affordable housing opportunities on another portion of the KBD land.

Certain components of the KBD project were funded and developed by the public sector prior to the retail centre and these included the offices of the Departments of Social Welfare and Home Affairs, the magistrate offices, swimming pool complex and sporting facilities. A regional hospital has also been completed within the KBD recently.

In terms of Section 4 of the LAA the City intends to sell a portion of approximately 4000m² in extent, zoned Mixed-use 1 and situated at the corner of Julius Tsolo and Mzala Streets by means of a direct sale to KCT at a determined rate of R100-00/m² exclusive of VAT, to on sell to Atlantic Philanthropies (a non-profit organisation) for the development of a Youth and Community Centre. The City's intention has been advertised in the Cape Time and Die Burger and no objections were received.

The proposed youth and community centre will inter alia consist of the following:

- a) A reception area including admin. and advice offices.
- b) A classroom and a library.
- c) An auditorium and a hall.
- d) A canteen, kitchen and restrooms.
- e) Approximately 5 line shops and restrooms.
- f) A landscaped parking area.

The City of Cape Town has direct knowledge of the activities of the KCT through the working relationship between the City and the KCT, and accordingly will at all times be fully informed about the development of the proposed Youth and Community Centre.

It will be a condition of the sale of the subject portion of Remainder Erf 18370, Khayelitsha that the KCT and Atlantic Philanthropies enter into an agreement which binds the latter to deliver the Youth and Community Centre project in accordance with the agreed deliverables.

9. Constitutional and Policy Implications

9.1 Chapter B of Council's policy relating to the Management of Certain of the City of Cape Town's Immovable Property, as approved by Council on 26 August 2010 (C 54/08/10), permits the disposal of immovable property and the intention to sell to the KCT has, in terms of paragraph 11.5 of this policy' been advertised in the Cape Times and Die Burger.

9.2 Section 13 under Annexure B of the Policy on the Management of Council's Immovable Property, approved 20 June 2005 (MC 29/06/05) , amended 19

October 2005 (MC 31/10/05), promulgated 3 February 2006 (PG 6340: LA 32323) applies until repealed.

“Viable immovable property may be sold out-of-hand in exceptional cases where the Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and the Council, where none of the conditions as set out in this policy provides for such exception and where such action is not in conflict with any provision of the policy”.

The City founded the KCT with the overall objective of uplifting the community of Khayelitsha through procuring the KBD land for development and investing the income in further development of the same community. Therefore, public competition would not serve this purpose and would not be in the interest of the community and Council as it is very unlikely that another investor would be willing to continuously reinvest their income in the same community.

- 9.3 A resolution to proceed with the disposal of this property is supported by the applicable legislation and policies. Since it would be impractical to follow an open and competitive route due to the very existence of the Land Availability Agreement, the call for public comments has been followed in terms of paragraph 11.5 of the Policy on the Management of Certain of the City of Cape Town’s Immovable Property.

Furthermore, the City’s approval to enter into the LAA predates the coming into effect of the abovementioned policies.

10 Legal Implications

- 10.1 By concluding the existing Land Availability Agreement (LAA) which enables the KCT to procure the KBD land prior to any development on the KBD land and to facilitate the development on such land, Council made a determination that the KBD land was not required for basic municipal purposes and thus the proposed sale is in compliance with Section 14 of the Municipal Finance Management Act No.56 of 2003 (MFMA).
- 10.2 Council’s By-Law (LA 12783) relating to the Management and administration of the City of Cape Town’s Immovable Property as published on 28 February 2003 (Section 4) permits the disposal of immovable property.
- 10.3 The disposal of municipal capital assets is governed by Chapter 2 of the Municipal Asset Transfer Regulations (R.878) in effect from 1 September 2008 (MATR).
- 10.4 Council may in terms of **Reg 5(1)(b)(i) of the MATR** transfer or dispose of

non-exempted capital assets after it has - in a meeting open to the public – made the determinations required by Sec 14(2)(a) and (b) of the MFMA:

- The erven (assets) are not needed for basic municipal services;

Council made the determination that the KBD land was not required for basic municipal services through the conclusion of the LAA. In addition, relevant departments were consulted and had no objections to the proposed sale.

- Considered the fair market value of the assets and the economic and community value to be received in exchange for the assets.

The market value for the property is approximately R3 200 000-00 excluding VAT. However, in view of the fact that the land value escalations were not included in the LAA, Council will receive approximately R400 000-00 excluding VAT. Nevertheless, Council will receive additional income in the form of future rates and taxes on the property. Furthermore, the development of the proposed youth and community centre by Atlantic Philanthropies will stimulate education, social and economic growth in the area and thus improve the lives of the residents.

- 10.5 In terms of **Reg 7 of the MATR**, Council must take into account a number of factors (highlighted in bold) when considering any proposal to transfer or dispose of non-exempted capital assets, and it is herewith confirmed that:

Factor A: Whether asset is required for municipality's own use at later date (also Sec 14(1), Sec 14(2)(a) and Sec 90(1) of MFMA)

By concluding the existing Land Availability Agreement Council made a determination that the KBD land is not required for basic municipal services. In addition, meetings were held with the relevant Council's service branches and they confirmed that the asset is not required for own purposes (see Section 11 of this report).

Factor B: Loss or gain expected to result from proposed transfer

Due to fixed market values for the KBD land as the escalations were not included in the LAA, Council will not receive a fair market value for the

property. However, Council will receive future rates and taxes on the property. The sale of the property will also stimulate economic growth.

Factor C: Significant economic or financial cost or benefit to municipality/ compensation

Council will receive a financial benefit in the form of rates and taxes following the development of the property. In terms of the Land Availability Agreement Council will received approximately R400 000-00 (excluding VAT) for sale of the subject property.

Factor D: Management of risk

No operational and control risk to the City.

Factor E: Impact on credit rating, financial position, cash flow of municipality

No impact.

Factor F: Limitations and conditions attached to capital assets

None

Factor G: Cost of transfer or disposal

The normal costs related to advertisements have been incurred by Council. The purchaser (KCT) will be responsible for the transfer costs.

Factor H: Transfer of liabilities and reserve funds associated with the asset

None

Factor I: Stakeholder comments and recommendations

The Council's intention to alienate Remainder Erf 18370, Khayelitsha was duly advertised to the public in the Cape Times and Die Burger on 31 October 2014. The relevant Sub-Council, Ward Councilor, and Subcouncil manager were notified on 8 December 2014 for comment and notification purposes and no objections were received. A report was formally submitted

to Subcouncil 10 and the proposed sale including development was unanimously supported by all councilors.

Factor J: Views from National and Provincial Treasury

The asset being referred to is not a 'high value' asset, as defined in the MATR. However, the general comments and requirements of Treasury applicable to similar transactions have been considered and thus the proposal is in compliance.

Factor K: Strategic, legal, and economic interests

None of these interests will be compromised through alienation of the asset - in fact they will be supported.

Factor L: Compliance with legislative regime that is applicable to proposed transfer or disposal

Alienation of this asset is compliant with the MFMA, Municipal Asset Transfer Regulations, 2008, Reg 12(1) and Council's Policy on Immovable Property adopted in 2010.

- 10.6 In terms of **Reg 13(2) of the MATR**, if a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity must, when considering the proposed transfer, take into account –

- (a) **the interest of –**
 (i) **the State; and**

When the City founded the KCT the overall objective was to uplift the community of Khayelitsha through procuring the KBD land for development and investing the income in further development of the same community. Therefore, it has never been the intention of the City to make profit as the land value escalations were never included in the LAA.

(ii) **the local community;**

The development of the proposed youth and community centre by Atlantic Philanthropies will stimulate education, social and economic growth in the area and thus improve the lives of the residents.

(b) **the strategic and economic interests of the municipality or municipal entity, including long-term effect of the decision on the municipality or entity;**

The proposed sale is in compliance with the strategic and economic interests of the City as the proposed youth and community centre will fulfil the overall objective of the City and thus the uplifting of the community of Khayelitsha through procurement of the KBD land by the KCT for reinvesting the income in further development of the same community. There is no foreseeable long-term negative effect of the decision on the municipality.

(c) **the constitutional rights and legal interests of all affected parties;**

The development of the proposed youth and community centre by Atlantic Philanthropies will stimulate education, social and economic growth in the area, improve the lives of the residents and thus fulfil the legal obligation of the City and the KCT to uplift the community of Khayelitsha through procurement of the KBD land by the KCT and further reinvestment of the income in the same community.

(d) **whether the interests of the parties to the transfer should carry more weight than the interests of the local community, and how the individual interest is weighed against the collective interest; and**

The proposed sale and development are in the interest of all parties including the khayelitsha community as everyone stand to benefit out of the proposed transfer.

- (e) **whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.**

The City founded the KCT with the overall objective of uplifting the community of Khayelitsha through procuring the KBD land to the KCT for development and investing the income in further development of the same community. In terms of the LAA, the KBD land is to be sold to the KCT at 2004 market value and in turn the KCT is to on sell to the third party at current market value in order to make income and reinvest in other similar projects for the further development of the community.

11. FINANCIAL IMPLICATIONS

All costs involved in this transaction will be for the purchaser's account.

11.1 Sustainability Implications

Does the activity in this report have any sustainability implications for the City? No Yes

11.2 Staff Implications

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

(if yes, please indicate whether or not it is part of the approved staffing structure, whether the posts are budgeted for etc.)

No operational and control risk to the City.

12. Other Services Consulted

Meetings were held with the relevant City departments and the following comments were received:

Sports and Recreation

No objection, provided the applicant (Atlantic Philanthropies) fund the design and building of a 'like for like' replacement of the lost infrastructure (parking and hard court) including all subsurface infrastructure and landscaping needed due to boundary encroachment.

TCT Transport Planning

No objection, provided a 30m transit corridor is provided for the coming bus service.

Planning and Building Development Management

No objection.

The Branch comments and conditions have been noted. The conditions will be considered as part of the sale agreement.

ANNEXURES

Annexure A : Disposal Plan LIS 1249v1

Annexure B : Land allocated to KCT in terms of the LAA

FOR FURTHER DETAILS CONTACT:

| | |
|------------------------|---|
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| DIRECTORATE | <i>Finance</i> |
| DEPARTMENT | <i>Property Management</i> |
| FILE REF NO | <i>HO 14/3/3/2/5/147/1/A37</i> |



MANAGER: PROPERTY DEVELOPMENT
ANDRE HUMAN

Comments:

Tel. 021 400 2366

Date: *9.03.2015*

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Gelderbloem

NOMINEE FOR EXECUTIVE DIRECTOR :
FINANCE
RUBY GELDERBLOEM

Comments:

Tel. 021 400 1361

Date 2015-03-10

- REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION
NON-COMPLIANT
- NON COMPLIANT

Jhansay

LEGAL COMPLIANCE

Comments:

NAME: A.S. JHANSAY

Tel. (02) 400 4586

Date: 10-03-15

Certified as legally compliant:
Based on the contents of the report.

